

The Gazette of India

EXTRAORDINARY

PART I—Section 1

PUBLISHED BY AUTHORITY

No. 469] NEW DELHI, WEDNESDAY, NOVEMBER 19, 1952

ELECTION COMMISSION, INDIA

NOTIFICATIONS

New Delhi, the 19th November, 1952

No. 19/10/52-Elec.III.—WHEREAS the elections of Shri Hem Chand Jain of House No. 4690, Gali Umrao Singh, Pahari Dhiraj, Delhi, and Shri Dhanpat Rai of XIV/1768-69 Basti Jullahan, Sadar Bazar, Delhi as members of the Legislative Assembly of Delhi State from the Pahari Dhiraaj Basti Jullahan Constituency of that Assembly have been called in question by an election petition (Election Petition No. 10 of 1952 before the Election Commission) duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951) by Shri Suraj Bhan of House No. 4401, Mohalla Jatan, Pahari Dhiraaj, Delhi;

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 86 of the said Act, for the trial of the said petition, has in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its order on the said Election Petition;

NOW, THEREFORE, in pursuance of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

PETITION RELATING TO DELHI LEGISLATIVE ASSEMBLY FROM THE
PAHARI DHIRAJ-BASTI JULLAHAN CONSTITUENCY

BEFORE THE ELECTION TRIBUNAL, DELHI

Election Petition No. 3 of 1952

Shri Suraj Bhan, son of Shibba Mal, resident of House No. 4401, Mohalla Jatan, Pahari Dhiraaj, Delhi.—*Petitioner.*

Versus.

1. Shri Hem Chand Jain, House No. 4690, Gali Umrao Singh, Pahari Dhiraaj, Delhi.
2. Shri Dhanpat Rai, XIV/1768-69, Basti Jullahan, Sadar Bazar, Delhi.
3. Shrimati Amarti Devi, 3887, Basti Imli Wall, Gali Barna, Sadar Bazar, Delhi.
4. Shri Parbhati Lal, House No. 1700/2, Basti Jullahan, Sadar Bazar, Delhi.
5. Dr. Ram Prasad, 3887, Basti Imli Wall, Gali Barna, Sadar Bazar, Delhi.
6. Shri Baldev Raj, House No. 5352, Basti Harphool Singh, Sadar Bazar, Delhi.
7. Shrimati Sarupwati, House No. 5689, Basti Harphool Singh, Sadar Bazar, Delhi.—*Respondents.*

BEFORE THE ELECTION TRIBUNAL, DELHI.

SHRI SURAJ BHAN

Versus

SHRI HEM CHAND JAIN ETC.

ELECTION PETITION No. 3 OF 1952

JUDGMENT

This election petition concerns a double-member constituency for the Delhi State Legislative Assembly. One of the seats was reserved for a member of a scheduled caste while the other seat was open to every one. Several nomination papers were filed by a large number of candidates, including Shri Suraj Bhan petitioner. His nomination was, however, rejected by the Returning Officer and so were the nominations of several others. Finally Shri Dhanpat Rai respondent No. 2 was returned to the reserved seat and Shri Hem Chand respondent No. 1 to what is called the "unreserved seat." The petitioner claims that his nomination was improperly rejected, and the result of the election was, therefore, materially affected, and the entire election should be declared void.

Several pleas were raised in defence, and some of them, we feel, without any real foundation. It was pleaded that the petition should be dismissed as it did not bear any court-fee, and also because it was not properly verified. It was further pleaded that certain candidates, whose nominations were rejected by the Returning Officer, were not joined in the petition and it was liable to be dismissed for that reason. It was alleged that the petitioner had not filed a proper return of his election expenses with the Election Commission, and he had, therefore, incurred a disability under Section 7 of the Representation of the People Act, 1951, and although admittedly this disqualification had been removed by the Election Commission under Section 144 of the Act, it was pleaded that the petitioner was not competent to maintain the petition in spite of the removal of the disqualification. It was further alleged that the petitioner had not complied with Section 117 of the Act, as he had not deposited the necessary security of Rs. 1,000 along with the petition. A plea of limitation was also raised. Finally, it was pleaded that the nomination of the petitioner was rejected quite properly, and that it had, in any case, not materially affected the result of the election.

On behalf of Shri Dhanpat Rai respondent, it was pleaded that the rejection of the petitioner's nomination had no connection with his election to the reserved seat, because the petitioner did not and could not claim that seat, and even if the election of the first respondent was to be set aside, his own election should not be disturbed.

On the pleadings, we framed the following issues:—

- (1) Is the petition liable to be dismissed for want of court-fee?
- (2) Is the petition not properly verified. If so, what is the effect?
- (3) Are the following persons, namely, Lurinda Mal, Z. A. Jalson, Aziz Ahmad, Secunder Bakht, Mai Dhan, Devi Dutt, and Bishan Singh and Phool Singh necessary parties to the petition?
- (4) What is the effect, if any, of not joining them in the petition?
- (5) What is the effect of the disqualification of the petitioner under Section 7(c) and 142 of the Representation of the People Act, 1951, and the removal of that disqualification by the Election Commission?
- (6) Have the provisions of Section 117 of the Representation of the People Act, 1951, not been complied with. If so, what is the effect?
- (7) Was not the petition filed within time?
- (8) Was the nomination of Shri Suraj Bhan petitioner improperly rejected by the Returning Officer. If so, has the result of the election been materially affected by such rejection?
- (9) If it is found that the nomination of the petitioner was improperly rejected and the result of the election has been materially affected by such rejection, would the election of Shri Dhanpat Rai respondent No. 2 be not affected?

Issue No. 1.—Regarding court-fee, we are quite clear that an election petition is not covered by the Court-Fees Act and no court-fee is, therefore, required. Learned counsel did suggest that it was a petition presented to an Executive Authority within the meaning of Clause (c) of Article I of the Second Schedule to

the Court-Fees' Act, but we are wholly unable to agree that either this Tribunal or the Election Commission can be deemed to be such an authority within the meaning of the Act. We, therefore, see no force in this objection and answer the issue in the negative.

Issue No. 2.—The petition is followed by a verification, which runs: "Statements made above in paragraphs 1 to 9 and 11 are true to the best of my knowledge and statements made in paragraphs 10 and 12 are true to the best of my belief." The objection taken is that this verification is not strictly in accordance with the Civil Procedure Code and is, therefore, defective. We are, however, unable to discover any particular defect in the form of the verification, and we find that it is a substantial and sufficient compliance with the provision of law. Holding, therefore, that the petition is properly verified, we decide the issue against the respondent.

Issue No. 3.—It is admitted that the persons named in this issue were candidates at the election, but their nominations were rejected. The question is, whether they were necessary parties to the Petition. The matter is governed by Section 82 of the Representation of the People Act, 1951. This says:—

"A petitioner shall join as respondents to his petition all the candidates who were duly nominated at the election other than himself if he was so nominated."

expression "duly nominated" is not specifically defined in the Act. A "candidate" is, however, defined in Section 72, and means a person who has been or claims to have been duly nominated as a candidate at any election. The procedure laid in the Act is that after the nominations are received the Returning Officer fixes a date for their scrutiny, and having rejected those he finds invalid, he prepares a list of the valid nominations and publishes that. The rules framed under the Act define a "validly nominated candidate" as a candidate who has been duly nominated and has not withdrawn his candidature in the manner and within the time specified. We conclude from this that the expression "duly nominated" means a candidate whose nomination has been accepted by the Returning Officer though he may have withdrawn within time. Candidates, who withdrew, are duly nominated candidates but not validly nominated. On this view of the matter, it is clear that those candidates, whose nominations were rejected by the Returning Officer, were not duly nominated candidates, and it was not necessary to join them in the petition. We are fortified in this conclusion by the provision contained in Section 90 of the Act, which requires the petition to be published and permits any other candidate to appear and ask to be joined in the petition, which apparently refers only to a candidate not "duly" nominated. We, therefore, hold that it was not necessary to join the persons mentioned in issue No. 3 to the petition and we answer the issue accordingly.

Issue No. 4.—This issue does not arise in view of our finding on the previous issue.

Issue No. 5.—The disqualification incurred by the petitioner under Sections 7(c) and 142 of the Act has admittedly been removed by the Election Commission, and we cannot at all see how the petitioner can be debarred from maintaining the petition. We, therefore, hold that the mere incurring of the disqualification in question by the petitioner has no effect on the present petition.

Issue No. 6.—The plea involved in this issue appears to have been raised due to a misapprehension of facts. It is not true that the petitioner had not deposited the necessary security. He had actually done so and furnished the Election Commission with a receipt of deposit. The petition contains a note to that effect. The Election Commission appears to have retained this receipt and not sent it to us along with the petition, and this was, of course, not necessary. We are satisfied that the provisions of Section 117 of the Act have been complied with.

Issue No. 7.—The question of limitation was not seriously raised before us, and it does not in fact arise. We are satisfied that the petition was filed within time.

Issue No. 8.—We now come to the really important issue in the case. Shri Suraj Bhan petitioner had filed his nomination paper within the prescribed time. The original is on the record (Ext.P/1). This was rejected by the Returning Officer on the ground that the nomination paper did not indicate if the petitioner was seeking election to the reserved seat or the general seat. This ground, we find, is wholly untenable. No candidate is required to say, whether he is seeking election to a reserved seat or a general seat. All that is required is, that if he is a member of a scheduled caste, he must state the particular caste and the area

in relation to which such caste is one of the scheduled castes. This is abundantly clear from the printed form of nomination paper, which a candidate is required to fill. Clause (vi) of the form mentions the requirement, and in answer to that requirement the petitioner in this case placed a cross-mark, clearly indicating that he was not a member of a scheduled caste. Nothing further was necessary, for if the petitioner did not claim to be a member of a scheduled caste, and this he made clear in the nomination paper, then there was no question of his claiming the reserved seat, and no conceivable confusion could possibly arise in this connection.

The Returning Officer appears to have thought that it was necessary for the petitioner to write down at some place in his nomination paper that he was a candidate for the general seat. This view is wholly erroneous, for strictly speaking there is no such thing as a general seat. The constituency as a whole is called upon to elect two members, and the only reservation is this, that one of the seats must necessarily go to a member of a scheduled caste, and the procedure is that on a counting of the votes the Returning Officer has first to decide which of the scheduled caste candidates has secured the largest number of votes and declare him elected to the reserved seat, and then to decide which of the remaining candidates, whether belonging to a scheduled caste or not, has secured the largest number of votes and to declare him elected to the second seat. This procedure cannot be hampered in the least by any omission on the part of any candidate to mention that he is claiming the general seat. We are, therefore, satisfied that there was no substantial irregularity in the nomination paper filed by the petitioner, and the Returning Officer was not justified in rejecting it. ... conclude that the petitioner's nomination was improperly rejected.

On the second part of this issue, we heard arguments in this case along with two other cases, in which the same issue had arisen, so that on this aspect of the case we have had more than usual assistance. We find that the matter is very largely concluded by authority. The words in the previous statutes governing this matter were identical to the words employed in the Representation of the People Act, 1951, Section 100, Sub-Section (1), Clause (c), and a review of the previous decisions, beginning with the Rohtak case (Indian Election Petitions, 1920, by E. L. L. Hawmond, Volume 1, page 183) decide in 1921, and going right up to the present time, unmistakably shows that the moment a nomination is improperly rejected, the result of the election is to be deemed to be materially affected. We were much pressed by the learned counsel for the respondents to say that the previous decisions were not correct, and that unless we can find as a question of fact that the returned candidate would not have been successful, had the rejected nomination been accepted and that candidate allowed to contest the election, we cannot upset the election. We have dealt with this argument at length in Election Petition No. 2 of 1952 (Shri Hans Raj V Shri Ram Singh Etc.), and we have come to the conclusion that even as a matter of first impression this view is not tenable. The reason is that if we are to discover what the chances of the returned candidate would have been, if the excluded candidate had been allowed to contest the election, we can have nothing but idle speculation to depend upon, and we are perfectly clear in our mind that the Legislature could not possibly have intended us to speculate. As we have already mentioned, there is a long chain of decisions, without a single exception, in support of the view that the mere rejection of a nomination paper if improper, is sufficient to conclude that the result of the election has been materially affected, and nothing has been said before us to persuade us to disregard these decisions. We, therefore, find us hesitatingly that the result of the election has been materially affected by the improper rejection of the petitioner's nomination.

Issue No. 9.—On behalf of Shri Dhanpat Rai respondent, it was contended that his election is not necessarily connected with the rejection of the petitioner's nomination, because he was returned to the reserved seat, which could not be claimed by the petitioner. We would have been quite happy to leave the election of Shri Dhanpat Rai untouched, if under the law we had been able to do so. It so happens, however, that it is wholly impossible to disentangle the election of this respondent from the entire election of the two members from the constituency. This is because the voters in the constituency are under the rules allowed two votes each with the option of casting these votes for any of the candidates irrespective of the fact, whether he does or does not belong to the scheduled caste, the only condition being that not more than one vote can be cast in favour of one candidate. It is, therefore, clear that any one of the voters, who cast his vote for Shri Dhanpat Rai, might have cast the same vote for the petitioner, had his nomination not been rejected, and it is now, of course, impossible to discover who may or may not have voted for this

respondent if the petitioner had been in the field. In these circumstances, the proper view to adopt is that the constituency as a whole was to elect two members and the entire election was one. Since, therefore, we have found that the rejection of the petitioner's nomination has materially affected the result of the election, we are bound to hold that the entire election, that is, the election of both the candidates has been materially affected by that fact, and we have to upset the whole election, including the election of the second respondent.

The result is that we declare the election to the Delhi Legislative Assembly from the Pahari Dhiraj-Bastli, Jullahan Constituency wholly void. As we are upsetting the election without any apparent fault on the part of the returned candidates, we think it only proper that the parties should be left to bear their own costs, and we order accordingly.

15th November, 1952.

Announced.

(Sd.) DURGA PERSHAD NAIR, *Member,*
Election Tribunal, Delhi.
(Sd.) R. B. PARSHOTAM LAL, *Member,*
Election Tribunal, Delhi.
(Sd.) S. S. DULAT, I.C.S., *Chairman,*
Election Tribunal, Delhi.

No. 19/65/52-Elec.III.—WHEREAS the election of Shri Sham Charan Gupta, son of Shri Naidar Singh, House No. 4609, Deputy Ganj, Delhi as a Member of the Legislative Assembly of the State of Delhi from the Deputy Ganj Constituency of that Assembly has been called in question by a joint election petition (Election Petition No. 65 of 1952 before the Election Commission) duly presented under Part VI of the Representation of the People Act (XLIII of 1951) by Shri Jagannath Sharma, son of Pandit Salig Ram, House No. 380/381, Teliwara, Gali Lodhian, Sadar Bazar, Delhi, Shri Suchet Singh, son of Ch. Ghasi Ram, House No. 3929, Khari Kuan, Delhi and Shri Vishwa Nath, son of Lala Nand Kishore, House No. 2976, Siraj Ganj, Bahadurgarh Road, Delhi;

AND WHEREAS the election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 86 of the said Act for the trial of the said petition has in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its order on the said Election Petition;

NOW, THEREFORE, in pursuance of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

**PETITION RELATING TO THE DELHI LEGISLATIVE ASSEMBLY FROM THE
DEPUTY GANJ CONSTITUENCY**

BEFORE THE ELECTION TRIBUNAL, DELHI

Election Petition No. 1 of 1952

1. Jagan Nath Sharma, son of Pt. Salig Ram, House No. 380/381, Teliwara, Gali Lodhian, Sadar Bazar, Delhi.
2. Suchet Singh, son of Ch. Ghasi Ram, House No. 3929, Khari Kuan, Delhi.
3. Shri Vishwa Nath, son of Lala Nand Kishore, House No. 2976, Siraj Ganj, Bahadurgarh Road, Delhi.—PETITIONERS

Versus

1. Shri Sham Charan Gupta, son of Niader Singh, House No. 4609, Deputy Ganj, Delhi.
2. Daya Nand, son of Ram Pershad, House No. 3961, Mohalla Ahiran, Pahari Dhiraj, Delhi.
3. Kasturi Bai, wife of Dr. Bhim Singh, residing in Deputy Ganj, Delhi.
4. Shri Mai Dhan, son of Manohar Lal, House No. 4170, Gali Ahiran, Pahari Dhiraj, Delhi.
5. Shrimati Sushila Mohan, wife of Shri Shamji Mohan, House No. 1756, Queens Road, Delhi.
6. Shri Bhiku Ram Jain, son of L. Mangat Rai, House No. 3863/64, Gali Mandir Wali, Deputy Ganj, Delhi.
7. Shri Manohar Lal, son of Chaudhari Nain Sukh Dass, House No. 3676, Gali Maman Jemadar, Sadar Bazar, Delhi.

8. Shri Des Raj Bharti, son of Ram Kishan, House No. 6066, Bari Market, Sadar Bazar, Delhi.

9. Shri Vidya Nand, son of Bhagwan Das, House No. 4101, Gali Mandir Wali, Pahari Dhiraj, Delhi.

10. Shri Kanwar Lal Gupta, son of Shri Chiranji Lal, residing in Med Ganj, Sadar Bazar, Delhi.

11. Shri Brij Mohan Dyal, son of Shri Durga Pershad, House No. 4777, Deputy Ganj, Delhi.

12. Shri G. L. Mittal, Magistrate 1st Class, Delhi.—*Respondents.*

BEFORE THE ELECTION TRIBUNAL, DELHI

SHRI JAGAN NATH, ETC. VERSUS SHRI CHARAN, ETC.

Election Petition No. 1 of 1952

JUDGMENT

The first petitioner was a candidate for the Delhi Legislative Assembly from the Deputy Ganj Constituency. The second and the third petitioners are electors in the constituency. The nomination of the first petitioner was rejected by the Returning Officer, and as he claims that the rejection was improper, he prays for a declaration that the election is void.

The first respondent Shri Shyam Charan Gupta is the returned candidate and is, therefore, the really contesting respondent. On his behalf a number of pleas have been raised. It is said first that the petition requires some court-fee and should be dismissed for want of it. It is further pleaded that the petition is not properly verified and should be dismissed for that reason. It is alleged then that the petitioner was disqualified by the Election Commission for not filing a proper return of his election expenses, and although it is admitted that the disqualification was later removed by the Election Commission, it is claimed that in spite of that the petitioner is not entitled to maintain the petition. It is next pointed out, that the petitioner has wrongly joined the Returning Officer as a respondent in the petition and it should fail for that reason. It is also alleged that the necessary security deposit of Rs. 1,000 was not made in this case according to the rules, and the petition is, therefore, not competent. A plea of limitation is also raised. Finally, it is pleaded that the rejection of the nomination of the petitioner was proper and it has had no effect on the election, and further that the petitioner is not entitled to show by any evidence other than the evidence produced before the Returning Officer that he was in fact over 25 years old and therefore entitled to seek election to the Legislative Assembly. In view of these pleadings we framed the following issues:—

- (1) Does the petition require any court-fee and is it liable to be dismissed for want of it?
- (2) Is the petition not properly verified, if so, what is the effect?
- (3) What is the effect of the disqualification of the petitioner No. 1 under Sections 7(c) and 143 of the Representation of the People Act, 1951, and the subsequent removal of that disqualification by the Election Commission?
- (4) What is the effect, if any, of joining respondent No. 12 in the petition?
- (5) Have not the provisions of Section 117 of the Representation of the People Act been complied with, if so, what is the effect?
- (6) Was not the petition filed within time and what is the effect?
- (7) Was the rejection of the nomination of Shri Jagan Nath Sharma, petitioner No. 1, improper, if so, has the result of the election been materially affected by such improper rejection?
- (8) Are not the petitioners entitled to lead evidence other than the evidence produced before the Returning Officer in respect of the age of the petitioner No. 1?
- (9) Relief?

Issue No. 1.—There is in our opinion, no merit in the suggestion that any court-fee is required for an election petition. We have come to the same conclusion in another petition. We say this because the Court-Fees' Act is neither in terms nor on any general ground applicable to an election petition.

Issue No. 2.—The petition is in fact verified, and having looked at the form of verification, we cannot find any serious defect in it. We hold, therefore, that the verification is in order and decide the issue against the respondent.

Issue No. 3.—It is admitted that the petitioner was at one stage disqualified under Section 7 and 143 of the Representation of the People Act, 1951, but that disqualification was admittedly removed by the Election Commission, and in view of that we cannot see how the petitioner can be debarred from maintaining the petition. The plea does not touch the right of the second and the third petitioners. We conclude, therefore, that this matter has no effect on the petition.

Issue No. 4.—The petitioner has named the Returning Officer as the 12th respondent. This was, we agree, unnecessary but we cannot hold that for that reason the petition can be dismissed.

Issue No. 5.—The necessary security of Rs. 1,000 was deposited by the petitioner in the Treasury, and the treasury receipt accompanied the petition when it was filed before the Election Commission. The mere fact, that the receipt is not now with the petition but has been kept back by the Election Commission, is no ground for saying that the provisions of Section 117 of the Act have not been complied with. We find the issue against the respondent.

Issue No. 6.—No serious attempt was made to convince us that the petition as not filed within time, and we see no point in this plea. We answer the issue accordingly.

Issue No. 7.—The petitioner's nomination was rejected by the Returning Officer on the ground of age. It is admitted that a person has to be 25 years old, or above, in order to seek election to a Legislative Assembly. Some objection, that the petitioner was not of the proper age, appears to have been taken. The Returning Officer did not actually find that the petitioner was under 25 years old. What he found was that his exact age was not mentioned in the electoral roll, and although in the nomination papers he was described as 35 in one case and 38 in the other, the Returning Officer apparently thought that this was not enough, and as there was, according to him, some discrepancy in the age mentioned in the nomination papers and the age entered in the electoral roll, he decided to reject the nomination. The words of the order of the Returning Officer in this connection are these:—

“There is no age entry in the nomination roll. I have ascertained from the office record that no such application has been made, nor any age entered as 35. The nomination paper is accordingly rejected.”

We had considerable difficulty in making out the precise meaning of the Returning Officer, but having examined him as a witness, we find that he had no real doubt regarding the fact that the petitioner was above the age of 25, and his difficulty merely was that the age was not correctly mentioned in the electoral roll. We are wholly unable to understand how any defect in the electoral roll can disentitle a person from seeking election so long as he is under the rules qualified to do so. As we have already mentioned, the petitioner stated his age as 35 in one nomination paper and 38 in the second. It is probable that the petitioner is himself not sure about his exact age, but as far as the really relevant fact is concerned, that is, whether he is above the age of 25 years, we have only to look at him to say that he is whether 35 or 38, certainly well above the age of 25. In the witness-box the Returning Officer himself agreed with this view, so that it is clear that if he had taken the trouble of looking at the petitioner, he would have had no doubt in his mind that he was on the ground of age entitled to stand for the Legislative Assembly.

The petitioner in fact called some evidence to show that he was near about 35 years old. Objection was taken on behalf of the respondent that this evidence was not admissible as it had not been produced before the Returning Officer. It is unnecessary to discuss this matter, as we find it wholly unnecessary to look to any evidence for finding that the petitioner is above 25 years old, except, of course, the evidence of his own personal appearance. In these circumstances, we have no doubt whatever that the petitioner's nomination was rejected improperly.

The question then is, whether the improper rejection of the nomination had a material effect on the election. In this connection we heard arguments in this case alongside two other cases, in which an identical issue had arisen, and after considering all the arguments addressed to us in all these cases, we have come to the conclusion that the very fact of the improper rejection of a nomination is sufficient to conclude that the result of the election has been materially affected, and that no evidence concerning the relative merits of the candidates can be of any assistance in this respect. This view is supported by every previous case that has been

brought to light without a single exception, and the previous cases cover a period of nearly 32 years right down to the present. It was contended before us that the previous decisions were not in accordance with the statutes governing the matter, and might for that reason be. We have not been able to accede to this view, and we have mentioned our reasons at length in Election Petition No. 2 of 1952. (Shri Hans Raj V. Shri Ram Singh etc.) decided today. We do not think it necessary to repeat those reasons here beyond saying that we are not at all persuaded that the previous decisions, which all support the petitioner, can be disregarded. In accordance with those decisions, therefore, we hold that the result of the election has been in this case materially affected by the improper rejection of the petitioner's nomination. It follows that this election cannot stand, and we declare, therefore, that the election to the Delhi Legislative Assembly from the Deputy Ganj Constituency is wholly void. In all the circumstances, we leave the parties to bear their own costs.

15th November 1952.

Announced.

(Sd.) DURGA PERSHAD NAIR, Member, Election Tribunal, Delhi.

(Sd.) R. B. PARSHOTAM LAL, Member, Election Tribunal, Delhi.

(Sd.) S. S. DULAT, I.C.S., Chairman, Election Tribunal, Delhi.

No. 19/9/52-Elec.III.—WHEREAS the election of Shri Ram Singh of House No. 2749, 23, Beadon Pura, Karolbagh, Delhi, as a member of the Legislative Assembly of Delhi State from the Tibbia College Constituency of that Assembly has been called in question by an election petition (Election Petition No. 9 of 1952 before the Election Commission) duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951) by Shri Hans Raj of House No. 8569, Original Road, Karol Bagh, Delhi;

AND WHEREAS the election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said petition, has in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its order on the said Election Petition;

NOW, THEREFORE, in pursuance of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

ELECTION PETITION RELATING TO THE DELHI LEGISLATIVE ASSEMBLY FROM THE TIBBIA COLLEGE CONSTITUENCY (No. 32)

BEFORE THE ELECTION TRIBUNAL, DELHI.

Shri Hans Raj, son of L. Bell Ram, house No. 8569, (Original Road), Karol Bagh, Delhi. *Petitioner.*

Versus.

1. Shri Ram Singh, son of Shri Achhya Ram, House No. 2749, 23, Beadon Pura, Karol Bagh, Delhi.
2. Shri Dilwar Singh, son of Shri Kishan Singh, House No. 16/10328, W.E.A., 8/3 Gurudwara Road, Karol Bagh, Delhi.
3. S. Uttam Singh Dugal, son of S. Bhagwan Singh, 18, Ratendone Road, New Delhi.
4. S. Gurmukh Singh Puri, son of S. Beant Singh Puri, House No. 8319, Block No. 59, Rohtak Road, Karol Bagh, Delhi.
5. L. Mool Raj, son of L. Bindra Ban, T.1610 Plot No. 7770, Original Road, Karol Bagh, Delhi.
6. S. Tarlochan Singh, son of S. Lal Singh, 1/767, Kashmeri Gate, Delhi.
7. S. Attar Singh, son of S. Shyam Singh, M. 103, Connaught Circus, New Delhi.
8. L. Hasumal, son of L. Udha Ram, House No. 7996, Rohtak Road, Delhi.
9. S. Mohan Singh Sahny, son of S. Gurdit Singh Sahny, House No. 242, Chatta Lal Mian, Delhi.
10. Shri Megh Raj, son of Shri Mam Raj, D.C.M. Quarters No. 7410, Mill Gate Line, Delhi.—*Respondents.*

BEFORE THE ELECTION TRIBUNAL, DELHI.

SHRI HANS RAJ

Versus

SHRI RAM SINGH ETC.

ELECTION PETITION No. 2 OF 1952

JUDGMENT.

This is an election petition by a voter in the constituency challenging the election of Shri Ram Singh respondent No. 1 to the Delhi Legislative Assembly. The sole ground taken is that the nomination of one of the candidates, namely, Shri Attar Singh respondent No. 7 was improperly rejected by the Returning Officer, and, consequently, the result of the election was materially affected. There are, thus, only two matters for our consideration, viz:—

- (1) Whether the nomination of Shri Attar Singh was improperly rejected? and
- (2) Has the result of the election been materially affected by such improper rejection?

There were, it appears, a number of candidates for election from this constituency called the "Tibbia College Constituency (No. 32)." The nomination of some of them were rejected by the Returning Officer, including that of Shri Attar Singh. Some candidates subsequently withdrew, and ultimately only two of them Shri Ram Singh and Shri Uttam Singh Duggal respondent No. 3 went to the polls, and Shri Ram Singh obtained a majority of votes. Shri Attar Singh had filed three nomination papers. In two of these the proposer was one Shri Fateh Singh and the seconder one Shri Gurmukh Singh, and in the third nomination paper the proposer was the same Shri Fateh Singh while the seconder was one Shri Sajjan Singh. All the three nomination papers were rejected on the ground that Shri Fateh Singh had subscribed to more than one nomination paper, which was not permissible under the rules.

The learned counsel for the respondent had the greatest difficulty in supporting the order of the Returning Officer on the ground taken by him, and we have no hesitation in concluding that the view of the Returning Officer is wholly unjustified.

The Returning Officer appears to have depended on Sub-Section (2) of Section 33 of the Representation of the People Act, 1951. This says—

"Any person whose name is registered in the electoral roll of the constituency and who is not subject to any disqualification mentioned in Section 16 of the Representation of the People Act, 1950, may subscribe as proposer or seconder as many nomination papers as there are vacancies to be filled *but no more.*"

What this provision very obviously means is that a person cannot as a proposer subscribe to the nomination of more candidates than there are vacancies, which in this case was only one, but the words cannot, in our opinion, mean that a proposer cannot subscribe to more than one nomination paper of the same candidate. To adopt the view taken by the Returning Officer would, in our opinion, be most unreasonable and wholly contrary to the scheme of the Act. The matter is put beyond all doubt by the provisions contained in Section 36 of the Act. Sub-Section (2) of Section 36 clearly mentions the grounds on which alone a Returning Officer may reject a nomination paper, and it is significant that the ground taken in the present case is not mentioned. What is more, Sub-Section (7), Clause (b), very clearly says:—

"Where a person has subscribed, whether as a proposer or a seconder, a larger number of nomination papers than there are vacancies to be filled, those of the papers so subscribed which have been first received, up to the number of vacancies to be filled, shall be deemed to be valid."

We are inclined to think that the Returning Officer did not properly direct his mind to the provisions of Section 36 of the Act, for had he looked at all the sub-sections of that section, he could not have failed to notice that even on his own view he was not competent to reject all the nomination papers on the ground which he took, and was, on the contrary, bound to hold the first of the nomination papers valid, and once he had so found, it was not necessary for him to consider the other two nomination papers.

Unable to support the rejection on the specific ground taken by the Returning Officer, learned counsel sought to attack it on another ground. It appears that Shri Attar Singh, although an elector for an assembly constituency and, therefore, qualified to be a member of the Legislative Assembly, was not an elector in the Tibbia College Constituency, and the rules require that in such circumstances a copy of the electoral roll of the constituency, in which the elector's name appears, is to be furnished to the Returning Officer. The objection taken is that this copy was not filed with the Returning Officer, and on that ground, therefore, the Returning Officer could and should have rejected the nomination. This raises a question of fact, which was sought to be elected during the evidence, but the Returning Officer was not in a position to support the respondent, and he frankly admitted that he could not remember and could not, therefore, say that a copy of the relevant electoral roll was not in fact produced before him. In the circumstances, there remains no substance in this objection.

Learned counsel then sought to raise another objection, which was not even mentioned in the earlier stages of the trial, but which had apparently occurred to learned counsel during the arguments. It was said that in one of the nomination papers, which, according to learned counsel, was the first to be filed, Shri Attar Singh had chosen as his first preference the symbol "LAMP, DEEPAK," while, according to the rules, such a symbol could not be adopted by a candidate without the express permission of the Returning Officer, and for this reason it was urged that the nomination was invalid. We noticed that this argument again raised a question of fact; that is, whether the Returning Officer's permission had been sought and obtained or not, and as that question of fact was never even alluded to during the trial, we found it impossible to permit learned counsel to raise it, and we consequently stopped him from arguing the matter further. Our finding on the first issue, therefore, is that the nomination of Shri Attar Singh respondent was improperly rejected.

Regarding the second issue, there has been considerably more controversy than we first thought possible. We understood at an early stage of this case that a similar issue arose in two other petitions before us, and at the suggestion of all the learned counsel, therefore, we agreed to hear the arguments in all these cases together, and we have, thus, had the advantage of listening to several points of view in this connection.

The argument on behalf of the petitioner is short and simple and may be almost described as traditional in the sense that it has been employed in nearly every previous case dealing with such a matter and has been always accepted. The argument is, that once it is shown that the nomination of a candidate was improperly rejected, it follows as a necessary inference that the result of the election has been materially affected, because, as some of the decisions say, the irregularity is of "so grave a character" that no other conclusion is possible, because the entire electorate is deprived of the right of voting for such candidate. For this argument, counsel relies very strongly on all the previous decisions, and there are, we understand, about 35 of them where this view of the matter has been adopted. As learned counsel points out, the inference is so strong that in none of the cases brought to light, has it ever been negatived.

As against this, stand is taken, on behalf of the contesting respondent, on the language of Section 100 of the Representation of the People Act, 1951, which says that the Tribunal shall declare the election to be wholly void if the Tribunal is of opinion that "the result of the election has been materially affected by the improper acceptance or rejection of any nomination," and it is contended that before an election can be upset the Tribunal has to find as a matter of fact not only that the nomination was improperly rejected but also that if such nomination had not been rejected, the candidate, who was declared successful, would not have been returned, and that if this is the plain meaning of the words of the Act of Parliament, we can, and we should, disregard the contrary view adopted in the previous decisions. To allow full weight to learned counsel's argument it is convenient to consider the argument first without reference to the previous decisions, not out of any disrespect to those decisions, but because this course places the argument in the best possible light. The contention is that the expression "materially affected the result of the election" means that the returned candidate would not have been successful, and the question, according to learned counsel, therefore, is, would Shri Ram Singh not have been elected, had Shri Attar Singh been allowed to contest the election. It is sufficient to pose such a question to be at once aware that we are here in the realm of pure speculation. We say this because we cannot conceive of any legal evidence, which could assist us in finding what would have happened, had Shri Attar Singh's nomination not been rejected. Witnesses have, of course, been called to say for the respondent that Shri Attar Singh had little or no chance of obtaining any appreciable number of votes, and, on the other hand, on behalf of the petitioner, that he would have nearly swept the polls. These witnesses have merely deposed to their own

opinions as to the possible state of the mind of the voters in a contingency, which never in fact arose, and, as we view the matter, these opinions are not evidence of any fact. No increase in the number of such opinions would help either. We are quite clear in our mind that, short of holding an election under conditions identical to those contemplated by the rules, there is no conceivable method of discovering how the majority of the electorate would vote in a particular set of circumstances. We cannot imagine that the Legislature intended that we should resort to conjectures and substitute our opinion without the foundation of any legal evidence for the verdict of the electorate. On this consideration alone we think we would be justified in holding that the construction sought to be placed on the words of the statute by the learned counsel for the respondent is not the true construction.

The matter can be viewed from another angle. It is admitted that a person qualified to stand as a candidate is entitled to contest an election. It is not a necessary condition that he should also show that he has any chance of success. Assuming for a moment that his nomination is rejected improperly, on the ground that he has no chance of succeeding, and he consequently approaches the Election Tribunal for a redress of his grievance, is it in any sense reasonable to require him to show not only that he was improperly excluded, which is his sole grievance, but also that he would have been preferred by the electorate to the other candidates. In our opinion, it is as irrelevant to raise such a question before the Tribunal as it would have been before the Returning Officer. For these reasons, even as a matter of first impression, we are of the opinion that it is not necessary for us to find as a matter of fact that Shri Attar Singh's inclusion in the contest would have defeated Shri Ram Singh in order to conclude that the result of the election has been materially affected by the improper rejection of Shri Attar Singh's nomination.

Learned counsel contended that if the view urged on behalf of the respondent is not correct, then certain words used in Sub-Section (1), Clause (c), of Section 100 of the Act are rendered superfluous, and it is unthinkable that the Legislature could have deliberately used superfluous words. The words of the Act are these:—

"If the Tribunal is of opinion—

(a)

(b)

(c) that the result of the election has been materially affected by the improper acceptance or rejection of any nomination paper, the Tribunal shall declare the election to be wholly void."

It is urged that if on the finding that a nomination has been improperly rejected, it is to follow that the result of the election has been materially affected, then it was hardly necessary for the Legislature to use the words "the result of the election has been materially affected" in connection with the improper rejection of a nomination. We do not think these words redundant. Two matters are mentioned here for the consideration of the Tribunal: (1) the propriety of the rejection of the nomination; and (2) the effect of such rejection on the election; and the mere fact that the second would follow from the first cannot be a ground for confusing the two and omitting either. It has to be remembered that the Legislature were here using words, which had been in use in the previous statutes for a long period of time, and those words had received authoritative interpretation, and it would have been both inconvenient and inadvisable to employ different words unless some consequence, other than what had always been the consequence in the past, was intended.

Turning to the authorities, we find that they are all one way and all in favour of the petitioner. We have already said that there are about 35 decisions under the Acts governing this matter before the Representation of the People Act, 1951, was enacted. Some decisions have since been made under the new Act, again in accordance with the previous decisions. There is, thus, a continuous and unbroken chain of judicial precedent to support the contention, that the improper rejection of a nomination must necessarily lead to the conclusion that the result of the election has been materially affected, and, therefore, the avoidance of the election. It was said in this connection that all these decisions are based on the Rohtak case (decided in 1921, reported in Hammond's Reports on the Indian Election Petitions, 1920, Volume I, at page 183), which in turn was based on certain English decisions, which were, according to the learned counsel, not applicable, because the English law governing such matters is different from the Indian law. We can find no warrant for the assertion that the election law in India is in substance different from the English law. It would be strange if it were so far like Parliamentary institutions, the law of election concerning such institutions has been imported from England, and it is hardly feasible that in the process it has undergone any change concerning its basic principles. Learned counsel sought to contrast the provision in Section 100, Sub-Section (1), Clause (c), of the Representation of the People

Act, 1951, with the language of Section 13 of the Ballot Act, 1872, in order to show that while in the case of Section 100 of the Representation of the People Act the onus rests on the petitioner, it is differently placed under Section 13 of the Ballot Act, and to conclude that the law in England is different. Section 13 of the Ballot Act is in fact not concerned with a matter of the kind mentioned in Sub-Section (1) of Section 100 of the Representation of the People Act. At the time the Rohtak case was decided, there was in fact no English statute providing of an irregularity like the improper rejection of a nomination, and the matter was governed by the rule of common law applicable to Parliamentary elections. What that rule was is clear from the two English decisions mentioned before us and also mentioned in the Rohtak case, namely, *Davies V. Kensington*, 1874 (L.R. IX, C.P. 720) and the *Mayo case*, 1874 (2 O'M. and H. 191), in both of which the election was set aside because the nomination had been improperly refused. It is the same rule, which has been given statutory form in Section 100. Sub-Section (1), Clause (c). The real meaning of Section 13 of the Ballot Act, 1872, is made perfectly clear in an English decision called the *Hackney case*, 1874 (2 O'M. and H. 77), where Grove J. observes:—

"So far as it seems to me the reasonable meaning of Section 13 is to prevent an election from becoming void by trifling objections on the ground of an informality, because the Judge has to look to the substance of the case to see whether the informality is of such a nature as to be fairly calculated in a reasonable mind to produce a substantial effect upon the election."

The position is not at all different under Section 100, Sub-Section (1) of the Representation of the People Act, 1951. When, therefore, we are dealing with a grave irregularity like the improper rejection of a nomination, the rule of English law is, in our opinion, fully applicable and we are not disposed to agree that the learned Commissioners in the Rohtak case went wrong in relying on the English decisions. We cannot imagine either, as is suggested by learned counsel, that the subsequent Indian decisions unthinkingly followed the Rohtak case without independently accepting the reasoning involved in it.

One criticism of the previous decisions was based on the ground that the reports of the decisions do not contain any elaborate reasoning. This, in our opinion, is not really fair criticism. The decisions do mention the reasons, and those reasons are not lengthy or elaborate because the answer to the question in issue is so obvious, and in a fair proportion of cases even conceded. We might in this connection refer to one of the only two English decisions, brought to light, concerning the improper refusal of a Returning Officer to nominate a candidate, namely, *Davies V. Kensington*, 1874 (L.R. IX, C.P. 720), in which the Court of Common Pleas having found that the refusal of the Returning Officer was improper, proceeded to declare the election void without any further discussion. We are mentioning this case to indicate that the weight of an authoritative decision is not necessarily to be gathered from the length of the discussion involved in it. The point of the Indian authorities is that they cover a long range of time and they all along point one way without a single exception. We are not at all persuaded that we can disregard the authority of this long established precedent.

We have purposely not referred to the evidence consisting, as it does, solely of opinions and conjectures regarding the merits of one candidate or the other, because, in our opinion, this evidence is entirely valueless. Having found that the nomination of Shri Attar Singh was improperly rejected, we must conclude that the result of the election was materially affected. We, therefore, declare the election to the Delhi Legislative Assembly from the Tibbia College Constituency (No. 32) wholly void. Considering, however, that the election is being upset not on account of any fault of the contesting respondent but because of the erroneous view of the Returning Officer, we think it only proper to leave the parties to their own costs.

15th November, 1952.

Announced.

(Sd.) S. S. DULAT, I.C.S., *Chairman,*
Election Tribunal, Delhi.

(Sd.) DURGA PERSHAD NAIR, *Member,*
Election Tribunal, Delhi.

(Sd.) R. B. PARSHOTAM LAL, *Member,*
Election Tribunal, Delhi.

P. S. SUBRAMANIAM,
Officer on Special Duty